2005 DRAFTING REQUEST

Bill

Received: **02/22/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Ron**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **ron.sklansky@legis.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**
robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Commitment and supervised release of sex predators

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?							
/P1	mdsida 05/03/2005 chanaman 08/11/2005	lkunkel 08/19/2005		_____ _____ _____ _____			
/P2			chaugen 08/23/2005	_____ _____	lemery 08/23/2005		

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	mdsida 09/06/2005	lkunkel 09/06/2005	pgreensl 09/06/2005	_____ _____	lnorthro 09/06/2005	lnorthro 09/06/2005	

FE Sent For: none

<END>

2005 DRAFTING REQUEST

Bill

Received: **02/22/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Ron**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **ron.sklansky@legis.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**
robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Commitment and supervised release of sex predators ✓

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?							
/P1	mdsida 05/03/2005 chanaman 08/11/2005	lkunkel 08/19/2005	9/6 ps	9/6			
/P2			chaugen 08/23/2005		lemery 08/23/2005		

for JLC

(for Senate PR mbd)

/1 lmk 9/6

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **02/22/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Ron**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **ron.sklansky@legis.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**
robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Commitment and supervised release of sex predators ✓

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mdsida	/p2 lmk 8/19	ch 8/23	ch 8/23 sf			

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **02/22/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Ron**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **ron.sklansky@legis.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**
robin.ryan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Commitment and supervised release of sex predators

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	mdsida		LC Conversion Ch 3/4	_____			
				_____			

FE Sent For:

<END>

Malaise, Gordon

From: Dsida, Michael
Sent: Monday, March 07, 2005 1:20 PM
To: Malaise, Gordon
Subject: Leg. Council draft

I've started to look at the bill that I asked you about last week, and one of the first problems that I have with it relates to something in ch. 48. Can you look at Section 3 of the bill (LRB-2215/P1)? I know that it should not be a new sub. (6) (I assume it should precede sub. (5)), but I thought I should ask you how you want it numbered.

(there are other problems with that provision, but I only need your input on where it should be placed.)

thanks

mike

① Split the provision Law enforcement / CT. records

48.396 (1j)
938.396 (1j) > Law enforcement records

CR 48.396 (2)(e)
AM 938.396 (2)(e) > CT. records

② Keep 48.396 - 938.396 parallel

Malaise, Gordon

From: Dsida, Michael
Sent: Monday, March 07, 2005 1:31 PM
To: Malaise, Gordon
Subject: question 2

The substance of section 4 might also be in the wrong spot. None of the other exceptions in s. 48.78 (2) are "shall disclose" provisions. Those all seem to be located with the other statutes relating to the matter to which the disclosure relates. -- such as s. 46.215(1m).

any thoughts?

2 alternatives:

① Make language of

48.78 (2)(e) parallel w/ (a-g)(am), (b), etc., i.e.,

"Par (4) does not prohibit..."

(but they want it stronger than "does not prohibit"; they want "shall" Therefore...)

Like 938.78 (2)(e)

(Or)* RM 938.78 (2)(e); 938.78 (4)

CR 48.78 (4)

AM 938.78 (2) (a) sch (3) or (4)

AM 48.78 (2)(e) " " "

information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

SECTION 2. 48.396 (5) (a) (intro.) of the statutes is amended to read:

48.396 **(5)** (a) (intro.) Any person who is denied access to a record under sub. (1), (1b) ~~or~~, (1d), or (6) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

SECTION 3. 48.396 ~~(6)~~ of the statutes is created to read:

48.396 ~~(6)~~ Records of law enforcement officers and of the ~~court assigned to~~ exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by and production to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

SECTION 2. 48.396 (5) (a) (intro.) of the statutes is amended to read:

48.396 **(5)** (a) (intro.) Any person who is denied access to a record under sub. (1), (1b) ~~or~~, (1d), or (6) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

SECTION 3. 48.396 (6) of the statutes is created to read:

48.396 **(6)** Records ~~of law enforcement officers and~~ of the court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by and production to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

NOTE: Creates a new provision [s. 48.396 (6)] relating to confidentiality of certain records. *Current law* provides that the following records are confidential and may be disclosed only to persons and entities specified in the statutes: (1) juvenile court records; (2) law enforcement records relating to juveniles; (3) pupil records; and (4) reports of child abuse and neglect. Under current law: (1) the files and records of mental health court proceedings are closed but are accessible to any person who is the subject of a petition for involuntary commitment or other petition under ch. 51, Stats. (the mental health act); and (2) patient health care records are confidential and may be released upon request without informed consent only under specified conditions.

Under new s. 48.396 (6):

1. Juvenile court records and law enforcement records relating to juveniles are open for inspection by and production to authorized representatives of the DOC, the DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding.

2. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision.

3. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding.

SECTION 4. 48.78 (2) (e) of the statutes is created to read:

48.78 **(2)** (e) ~~Notwithstanding par. (a),~~ an agency ~~shall, upon request, disclose~~ information to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the information involves or relates to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes specified juvenile records accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 5. 48.981 (7) (a) 8s. of the statutes is created to read:

48.981 **(7)** (a) 8s. Authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the reports or records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes juvenile records relating to abuse or neglect accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 6. 51.30 (3) (a) of the statutes is amended to read:

51.30 **(3)** (a) Except as provided in pars. (b) ~~and~~, (bm), (c), and (d), the files and records of the court proceedings under this chapter shall be closed but shall be accessible to any individual who is the subject of a petition filed under this chapter.

SECTION 7. 51.30 (3) (b) of the statutes is amended to read:

51.30 **(3)** (b) An individual's attorney or guardian ad litem and the corporation counsel shall have access to the files and records of the court proceedings under this chapter without the individual's consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, or commitment under this chapter or ch. 971 ~~or~~, 975, or 980.

SECTION 8. 51.30 (3) (bm) of the statutes is created to read:

of diagnosis or treatment of the patient's physical, mental, or emotional condition, between the patient and a health care provider. There is no privilege as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian, for court–ordered protective services, or for protective placement if the health care provider in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement.

The *draft* includes in the privilege exception communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP.

SECTION 33. 911.01 (4) (c) of the statutes is amended to read:

911.01 **(4)** (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, granting or revoking probation, modification of a bifurcated sentence under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195 (1r), issuance of arrest warrants, criminal summonses and search warrants; hearings under s. 980.093 (2); proceedings under s. 971.14 (1) (c); proceedings with respect to pretrial release under ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.

SECTION 34. 938.35 (1) (e) of the statutes is created to read:

938.35 **(1)** (e) In a hearing, trial, or other proceeding under ch. 980 relating to a person.

NOTE: Creates, with reference to the admissibility of delinquency dispositions, an exception for a hearing, trial, or other SVP proceeding relating to a juvenile. Under current law, the disposition of a juvenile, and any record of evidence given in a hearing in juvenile court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except as specified under the statutes. This SECTION provides that such information is admissible in an SVP proceeding.

SECTION 35. 938.396 (1) of the statutes is amended to read:

938.396 **(1)** Law enforcement officers' records of juveniles shall be kept separate from records of adults. Law enforcement officers' records of juveniles shall not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g), (1m), (1r), (1t), (1x) ~~or~~, (5), ~~or (10)~~ or s. 938.293 or by order of the court. This subsection does not apply to representatives of the news media who wish to obtain

information for the purpose of reporting news without revealing the identity of the juvenile involved, to the confidential exchange of information between the police and officials of the school attended by the juvenile or other law enforcement or social welfare agencies, or to juveniles 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 48.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

NOTE: See the NOTE to SECTION .

SECTION 36. 938.396 (2) (e) of the statutes is ~~renumbered 938.396 (10) and~~ amended to read:

938.396 ~~**(10)** Upon request of the department of corrections to review court~~ A law enforcement agency's records and ~~records for the purpose of providing, under s. 980.015 (3) (a),~~ of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney ~~with a person's offense history, the court shall open for inspection by authorized representatives of the department of corrections the records of the court relating to any juvenile who has been adjudicated delinquent for a sexually violent offense, as defined in s. 980.01 (6)~~ for use in the evaluation or

prosecution of any proceeding under ch. 980, if the records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes law enforcement records relating to juveniles accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 37. 938.396 (5) (a) (intro.) of the statutes is amended to read:

938.396 **(5)** (a) (intro.) Any person who is denied access to a record under sub. (1), (1b), (1d), (1g), (1m), (1r) ~~or~~, (1t), ~~or (10)~~ may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

SECTION 38. 938.78 (2) (e) of the statutes is amended to read:

938.78 **(2)** (e) ~~Paragraph (a) does not prohibit the department from disclosing~~ Notwithstanding par. (a), an agency shall, upon request, disclose information ~~about an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent offense, as defined in s. 980.01 (6),~~ to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney ~~or a judge acting under ch. 980 or to an attorney who represents a person subject to a petition~~ for use in the evaluation or prosecution of any proceeding under ch. 980, if the information involves or relates to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The

court in which the ~~petition~~ proceeding under ~~s. 980.02 is filed~~ ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes specified juvenile records accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 39. 940.20 (1g) of the statutes is created to read:

940.20 **(1g)** BATTERY BY CERTAIN COMMITTED PERSONS. Any person committed to an institution, described under s. 980.065, that provides care for sexually violent persons and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the institution, without his or her consent, is guilty of a Class H felony.

NOTE: Creates s. 940.20 (1g) to provide that an SVP who has been committed under ch. 980 and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the institution, without his or her consent, is guilty of a class H felony. The term "bodily harm" is defined in s. 939.22 (4), stats., to mean physical pain or injury, illness, or any impairment of physical condition. A class H felony is punishable by a fine not to exceed $10,000 or a term of confinement and extended supervision not to exceed 6 years, or both. The crime created in this provision is comparable to the crimes of battery by prisoners and battery to law enforcement officers and fire fighters; probation, extended supervision and parole agents and aftercare agents; and emergency medical care providers. [See s. 940.20 (1), (2), (2m), (3), and (7), stats.]

SECTION 40. 946.42 (1) (a) of the statutes is amended to read:

946.42 **(1)** (a) "Custody" includes without limitation actual custody of an institution, including a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), a secured group home, as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16), a Type 2 child caring institution, as defined in s. 938.02 (19r), a facility used for the detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065,

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, April 12, 2005 5:03 PM
To: Sklansky, Ron
Subject: Additional comments

1. Section 980.034 (3) and (4) should be replaced with the following:

(3) If the court determines that there exists in the county where the action is pending such prejudice that a fair trial cannot be had, it shall do one of the following:

(a) Order that the trial be held in any county where an impartial trial can be had. The judge who orders a change in the place of trial under this paragraph shall preside at the trial. Preliminary matters before trial may be conducted in either county at the discretion of the court.

(b) Order the selection of a jury from another county, but only if the court will sequester the jurors during the trial and only if the estimated cost to the county of using the procedure under this paragraph is less than the estimated cost to the county of using the procedure under par. (a). A court that proceeds under this paragraph shall follow the procedure under par. (a) until the jury is chosen in the 2nd county. The proceedings shall then return to the original county using the jurors selected in the 2nd county. The original county shall reimburse the 2nd county for all applicable costs under s. 814.22.

(4) The court may act under sub. (3) only once per case.

2. The timing requirement in s. 980.036 (3) (intro.) can be replaced with this:

(3m) When disclosure must be made. A party required to make a disclosure under this section shall do so within a reasonable time after the probable cause hearing and within a reasonable time before a trial under s. 980.05, if the other party's demand is made in connection with a trial. If the demand is made in connection with a proceeding under s. 980.07 (7), 980.09 (2m), or 980.093 (3), the party shall make the disclosure within a reasonable time before the start of that proceeding.

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, March 15, 2005 11:21 AM
To: Sklansky, Ron
Subject: FW: Leg. Council draft

-----Original Message-----
From: Malaise, Gordon
Sent: Tuesday, March 08, 2005 11:46 AM
To: Dsida, Michael
Subject: RE: Leg. Council draft

Mike:

Just to ocnfirm what I told you orally a few minutes ago:

1. In ss. 48.396 and 938.396, law enforcement records and court records are treated separately. That is because sub. (5), which permits a person to petition the court when access to a record is denied makes sense only as applied to law enforcement records denied by a law enforcement agency and not to court records denied by the court.

Accordingly, ss. 48.396 (1j) and 938.396 (1j) should be created for law enforcement records, s. 48.396 (2) (e) shold be created for court records, and s. 938.396 (2) (e) should be amended for court records.

2. As for social service records under ss. 48.78 and 938.78, because the new provision is not parallel to the paragraphs under s. 48.78 (2) and 938.78 (2) under current law, i.e., "Paragraph (a) does not prohibit . . .". the new provision should be

numbered (4) and not as a new paragraph under sub. (2).

Gordon

-----Original Message-----
From: Dsida, Michael
Sent: Monday, March 07, 2005 1:20 PM
To: Malaise, Gordon
Subject: Leg. Council draft

I've started to look at the bill that I asked you about last week, and one of the first problems that I have with it relates to something in ch. 48. Can you look at Section 3 of the bill (LRB-2215/P1)? I know that it should not be a new sub. (6) (I assume it should precede sub. (5)), but I thought I should ask you how you want it numbered.

thanks

mike

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, March 15, 2005 11:19 AM
To: Sklansky, Ron
Subject: Chapter 980 draft - Part III

Here are some additional questions and comments. Given the number of issues that I have raised, maybe it makes more sense at this point for you to redraft WLC 0083/2 to address them. I will keep reviewing the bill in the meantime. I'll also send you an email that Gordon Malaise sent to me regarding some problems in chs. 48 and 938.

42/20: This provision appears to preclude the court from appointing an expert of its own once the person is committed. Was that the Committee's intent?

43/10: Is the clause "or who has been committed under this chapter" appropriate? It appears that this section only applies to a person who has not yet been committed.

44/3: Sections 971.22 and 971.225, on which subs. (3) and (4) are based, is poorly drafted. Here's a clearer and briefer way of doing the same thing:

(3) If the court determines that there exists in the county where the action is pending such prejudice that a fair trial cannot be had, it shall do one of the following:

(a) Order that the trial be held in any county where an impartial trial can be had. The judge who orders a change in the place of trial under this paragraph shall preside at the trial. Preliminary matters before trial may be conducted in either county at the discretion of the court.

(b) Order the selection of a jury from another county, but only if the court will sequester the jurors during the trial and only if the estimated cost to the county of using the procedure under this paragraph is less than the estimated cost to the county of using the procedure under par. (a). A court that proceeds under this paragraph shall follow the procedure under par. (a) until the jury is chosen in the 2nd county. The proceedings shall then return to the original county using the jurors selected in the 2nd county. The original county shall reimburse the 2nd county for all applicable costs under s. 814.22.

(4) The court may act under sub. (3) only once per case.

If this change is not made, then:
1. The "Only one change" sentence needs to be moved. I assume that you don't want to allow a court to change venue to a 2nd county and then pick a jury from a 3rd.
2. Line 44/13 needs to be rewritten. This subdivision should refer to sub. (3), since the criterion for a change of venue in described more specifically in that subsection.

44/10 and 46/22: I assume that you intended to link "reasonable time" to "before a trial ... or other proceeding" (as well as to "after the probable cause hearing). As written, these provisions could be construed so that a party complies with the disclosure requirements if he or she discloses the necessary information immediately before the trial or other hearing. In any event, I am moving all of the timing language to a separate sub. (3m).

46/10 and 47/9: Why is "psychological" listed apart from "mental examination"? Isn't that redundant?

46/14: In contrast to the requirement for the SVO or alleged SVO at 47/13, this requirement applies to all witnesses (such as rebuttal or impeachment witnesses), not just those listed under par. (a). Is that intentional?

48/6: Assuming that it is the state that objects to disclosing a witness's name, is the "party at whose instance [the] deposition is to be taken" under s. 967.04 (2) the "person subject to this chapter"? Also, under s. 967.04 (1), the court may order the witness to produce records and other objects at the deposition. But the cross-reference here does not include that provision. Was that the Committee's intent? (I realize that this provision replicates s. 971.23 (6) -- and the problems that statute contains -- but I thought I should alert you to these issues.)

49/11: The second sentence arguably prevents a person subject to a proceeding under ch. 980 from examining his or her own medical records for the purpose of preparing for a hearing. Is that the Committee's intent? inspection

50/4: Given sub. (5), are motions challenging the timeliness of a petition *ever* appropriate? If so, what relief can the court grant?

50/10: Does the court retain personal jurisdiction over a subject of a petition after he or she is committed?

51/19: It's not clear how ss. 809.30 and 809.40 can both apply. I assume from the change to s. 809.30 (1) (c) that s. 809.30 should apply. If so, there are a number of other changes that need to be made to that section -- the title, the definitions of "person" and "prosecutor,", s. 809.30 (2) (a)...

Dsida, Michael

From: Dsida, Michael
Sent: Friday, March 11, 2005 4:31 PM
To: Sklansky, Ron
Subject: Chapter 980 draft - Part II

Additional questions and comments:

34/23: Instead of defining "act of sexual violence," it would make more sense to replace references to that term in the statutes with "sexually violent offense." For example, s. 980.01(2) should be amended as follows:

"Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to ~~engage in acts of sexual violence~~ commit sexually violent offenses.

There are two advantages to this. First, to get to the ultimate meaning of these provisions, the reader only has to go to the definition of "sexually violent offenses," not to that definition and the definition of "act of sexual violence." Second, the definition of "act of sexual violence" in s. 980.11 can be eliminated.

35/9 and 35/12: I realize that you included initial applicability provisions, but it might make sense to specify that a person who committed one of the offenses added by these provisions can be committed under ch. 980 even if the offense occurred prior to the effective date of the bill, assuming that is the intent. (We could use use language comparable to what we use in bills creating penalties for repeat offenders. For an example, see 2003 AB-482.)

36/16: For ease of reading, it would be better to just define "incarceration." It can also be moved to s. 980.01, along with "agency with jurisdiction." But based on your response to my next comment, it might be better to to define "imprisonment" instead. (That might require making changes to a couple of other ch. 980 provisions referring to imprisonment, but those changes would be pretty straightforward.)

38/1: There are several problems with these changes. First, because the definition of "continuous term of incarceration..." includes placements under chs. 48 and 938, this provision subsumes s. 980.015 (2) (b). Second, with the phrase "sentence of" being inserted before "imprisonment," this provision might be construed to require the agency with jurisdiction to provide notice with respect to people approaching the end of parole or a term of extended supervision. Is that the Committee's intent? (If so, that would be consistent with s. 980.015 (2) (c) and (d).) Third, "term of confinement in prison that was imposed" may be construed to undermine the holding of State v. Parrish as it applies to a person serving a TIS sentence. Time served upon revocation of ES is not part of the "term of confinement in prison that was imposed."

(On the other hand, the person might still be covered under the imprisonment clause, depending on what the Committee's intent was for that clause.) Fourth, in contrast to the approach approved in State v. Wolfe, the "continuous term" language appears to require the agency with jurisdiction to wait until 90 days before the end of the dispositional order (or criminal sentence) that ends last, even if an earlier-expiring order was imposed for an SVO. Was that what the Committee intended with respect to cases like Wolfe? Or does the agency provide notice at the end of the SVO disposition (as in Wolfe)? Or at either time?

(The last three of these issues are linked to the next two questions.)

38/20: Does "custody" include parole or extended supervision?

39/16: Does discharge include things like the termination of parole or extended supervision?

42/11: What if a party wants to call an expert without having him or her examine the person who is the subject of the petition? It would be rare, but an expert could be called solely to challenge the results of an examination performed by another party's or the court's expert (for example, by challenging his or her interpretation of tests administered to the person). But DOJ may tell you that this never happens in practice.

42/19: Do you want to include provisions for paying the court's expert (as in s. 980.031 (3))? Otherwise, s. 907.06 (2) might apply.

Dsida, Michael

From: Dsida, Michael
Sent: Tuesday, March 08, 2005 3:37 PM
To: Sklansky, Ron
Subject: Chapter 980 draft

Ron-

Rather than send you questions and comments piecemeal, I'll try to send you them in bunches. Here's the first bunch (prefaced by the relevant page/line number from the LRB version, which I've attached):

05-2215/P1

13/15: What (or who?) makes a representative an authorized representative?

13/19 and elsewhere: Does this only apply to evaluations conducted under s. 980.04 (3), or does it also apply to other evaluations/examinations under ch. 980 (such as under s. 980.07 or 980.09)?

14/12 and elsewhere: I'm not sure what "any purpose consistent with any proceeding" means. Would it allow releasing the info to the general public (for the purpose of public protection) if a person is placed on supervised release?

17/8: I assume that this follows from the creation of s. 51.30 (3) (bm). But should s. 980.015 (3) (b) also be repealed? If not, doesn't s. 51.30 (4) (b) 10m. need to remain?

18/11: The current version of this provision does not clearly indicate how the results may be disclosed to the committing court. In theory, the provision could be limited to off-the-record disclosures, especially given the fact that the public is not permitted access to the information. But the new language suggests that the results can become part of the record, which means that they will be open to the public. Given that, I probably should amend the last sentence of the current statute to permit redisclosure under those circumstances. Is that okay?

22/5: A reader of this paragraph will still need to look at the provisions in ch. 980 to find out how many jurors will be used. Therefore, it probably makes sense to just include the cross-references at 22/2, which eliminates the need for creating this paragraph.

23/8: Why are these three provisions being repealed and recreated (as opposed to amended)?

24/10: I just want to make sure that the initial applicability provision works with this. Does the change regarding the law of

privilege apply to communications that have already occurred, so long as the proceeding in which the information is sought has not commenced on the effective date? Yes

26/13 and 29/13: You need to add a number to the Notes. (I assume the latter one is 41, but I didn't look for the former.)

29/21: As a practical matter, how does a person escape from supervised release? D Note

30/5: This change is fine, but did you give any thought to repealing the entire section? It's already covered by s. 978.03 and 978.04. More importantly, I don't think the current version of this is accurate, given the limitation imposed in current s. 978.043.

Dsida, Michael

From: Sklansky, Ron
Sent: Friday, April 15, 2005 2:17 PM
To: Dsida, Michael
Cc: Salm, Don
Subject: RE: More on ch. 980 bill

The note should refer to SECTION 65.

-----Original Message-----
From: Dsida, Michael
Sent: Wednesday, April 13, 2005 4:56 PM
To: Sklansky, Ron; Salm, Don
Subject: More on ch. 980 bill

1. The note following Section 70 of the bill refers to a nonexistent note following section 64.

2. I don't think we talked about my comments regarding 36/16 and 38/1 (in Part II of my email). The first part of the first one (involving defining "incarceration) does not entail any substantive changes, so I am going to make those changes. I will not make any changes relating to what I wrote regarding page 38, line 1.

Dsida, Michael

From: Sklansky, Ron
Sent: Friday, April 15, 2005 2:16 PM
To: Dsida, Michael
Cc: Salm, Don
Subject: RE: More questions/comments...

Mike:

The first change is fine. Regarding the remaining comments, I don't have any problem with the changes if they are consistent throughout the provisions that provide access to confidential material without a court order.

Ron

-----Original Message-----
From: Dsida, Michael
Sent: Wednesday, April 13, 2005 1:29 PM
To: Sklansky, Ron; Salm, Don
Subject: More questions/comments...

13/15: "production to" is redundant. If it's not redundant (for example, if it means "copying by"), then it's the wrong phrase.

I think this one's ok: 16/2: Changing "shall be released to" to saying authorized reps "shall have access to" That is the formulation used in par. (b).

19/19 Any objection to inserting "upon request" before "disclose"?

20/13 Any objection to inserting "upon request" before "to authorized"? (It doesn't make sense to require disclosure or release without someone asking for the info first.)

thanks.

WISCONSIN LEGISLATIVE COUNCIL
STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON SEXUALLY VIOLENT PERSON COMMITMENTS

FROM: Don Salm and Ronald Sklansky, Senior Staff Attorneys

RE: Clarifications to WLC: 0083/1 Proposed by Thomas Fallon, Department of Justice

DATE: January 27, 2005

This Memo describes clarifications to WLC: 0083/1, generally relating to sexually violent person commitment proceedings, that have been proposed by Thomas Fallon, the Department of Justice liaison to the Special Committee on Sexually Violent Person Commitments. Mr. Fallon and the Special Committee staff met on January 24 to discuss the proposals, which briefly can be described as follows:

1. Amend s. 51.375 (2) (b), Stats., to clarify that polygraph results not only may be disclosed to a committing court, but they are also admissible in a proceeding before the court. [See Enclosure 1.]

2. Amend proposed s. 980.07 (1) (a) in WLC: 0083/1 to clarify that a court is not required to appoint an examiner if supervised release or discharge is supported by the examination conducted by the Department of Health and Family Services. [See Enclosure 2.]

3. Amend proposed s. 980.07 (1m) in WLC: 0083/1 to describe further the factors that should be assessed in a treatment evaluation for potential supervised release. [See Enclosure 3.]

4. Amend proposed s. 980.07 (7) (b) and (d) in WLC: 0083/1 to describe further the factors that a court must consider before authorizing supervised release and the conditions under which the court may grant supervised release. [See Enclosure 4.]

5. Amend proposed s. 980.07 (7) (c) in WLC: 0083/1 to require a county, within 30 days of a court order, to identify prospective residential options for placement of a person under supervised release. [See Enclosure 5.]

6. Amend proposed s. 980.093 (2) in WLC: 0083/1 to clarify that a court must consider assertions of fact and counsels' arguments in determining whether to deny a petition for discharge. [See Enclosure 6.]

DLS:RS:jal;rv

Enclosures

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536
(608) 266-1304 • Fax: (608) 266-3830 • Email: leg.council@legis.state.wi.us
http://www.legis.state.wi.us/lc

Enclosure 1

On page 23 of WLC: 0083/1, after line 3, insert:

SECTION 13m. 51.375 (2) (b) of the statutes is amended to read:

51.375 **(2)** (b) The department may administer a lie detector test to a sex offender as part of the sex offender's programming, care, or treatment. A patient may refuse to submit to a lie detector test under this paragraph. This refusal does not constitute a general refusal to participate in treatment. The results of a lie detector test under this paragraph may be used only in the care, treatment, or assessment of the subject or in programming for the subject. The results of a test may be disclosed only to persons employed at the facility at which the subject is placed who need to know the results for purposes related to care, treatment, or assessment of the patient, the committing court, the patient's attorney, or the attorney representing the state in a proceeding under ch. 980. The committing court to which the results of a test have been disclosed may admit the results in evidence in a proceeding under ch. 980.

Enclosure 2

On page 64 of WLC: 0083/1, beginning on line 3, delete lines 3 and 4 and substitute (the new language is italicized):

(a) An examiner as provided under s. ~~980.03 (4)~~ 980.031 (3), *except that the court is not required to appoint an examiner if supervised release or discharge is supported by the examination conducted by the department.* The county shall pay the costs of an examiner appointed under this paragraph as provided under s. 51.20 (18) (a).

Enclosure 3

On page 64 of WLC: 0083/1, beginning on line 11, delete lines 11 to 17 and substitute (the new material is italicized):

SECTION 99. 980.07 (1m) of the statutes is created to read:

980.07 **(1m)** At the time for any examination under sub. (1), the department shall prepare a treatment report based on its treating professionals' evaluation of the person and shall provide a copy of the report to any examiner conducting an examination under sub. (1). The report shall consider all of the following:

(a) The specific factors associated with the person's risk for committing another sexually violent offense.

(b) Whether the person has made significant progress in treatment or has refused treatment.

(c) The ongoing treatment needs of the person.

(d) Any specialized needs or conditions associated with the person that must be considered in future treatment planning.

Enclosure 4

Beginning on page 68 of WLC: 0083/1, amendments relating to factors the court may consider and conditions required for supervised release should be made:

1. On page 68, line 4, delete "the person's progress or lack of progress in treatment" and substitute: "whether the person has demonstrated significant progress in his or her treatment, whether the person has refused treatment".

2. On page 69, line 1, insert "only" after "release".

3. On page 69, line 3, delete lines 3 to 5 and substitute (the new material is italicized):

   "1. The person who will be placed on supervised release:

   a. Has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community *and the person's treatment progress can be sustained in the community; and*

   b. The person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed.".

4. On page 70, line 8, after that line insert:

   "7. The degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources.".

Enclosure 5

On page 68 of WLC: 0083/1, beginning on line 13, proposed s. 980.07 (7) (c) should be rewritten to read (the last sentence is new):

> 980.07 **(7)** (c) The court shall order the county department under s. 51.42 in the county of intended placement to prepare a report, either independently or with the department of health and family services, identifying prospective residential options for community placement. In identifying prospective residential options, the county department shall consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of the department of corrections and regarding whom a sex offender notification bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am). The county department shall complete its report within 30 days following the court order.

Enclosure 6

On page 78 of WLC: 0083/1, beginning on line 11, proposed s. 980.093 (2) should be rewritten to read (the italicized material is new):

> 980.093 **(2)** COURT REVIEW OF PETITION. The court shall review the petition within 30 days and the court may hold a hearing to determine if it contains facts from which the court or jury may conclude that the person does not meet the criteria for commitment as a sexually violent person. In determining under this subsection whether facts exist that might warrant such a conclusion, the court shall consider any current or past reports filed under s. 980.07, relevant *facts and* arguments in the petition and in the state's response, *arguments of counsel,* and any supporting documentation provided by the person or the state. If the court determines that the petition does not contain facts from which a court or jury may conclude that the person does not meet the criteria for commitment, the court shall deny the petition.

AN ACT ***to repeal*** 51.30 (4) (b) 10m., 980.02 (2) (ag), 980.03 (5), 980.05 (1m), 980.09 (1) (title), 980.09 (2) and 980.10; ***to renumber*** 978.13 (2) and 980.01 (1); ***to renumber and amend*** 938.396 (2) (e), 978.043, 980.015 (1), 980.015 (4), 980.03 (4), 980.04 (2), 980.07 (1), 980.09 (1) (a), 980.09 (1) (b) and 980.09 (1) (c); ***to amend*** 48.396 (1), 48.396 (5) (a) (intro.), 51.30 (3) (a), 51.30 (3) (b), 51.30 (4) (b) 8m., 51.30 (4) (b) 11., 51.375 (1) (a), 51.375 (2) (b), 109.09 (1), 146.82 (2) (c), 301.45 (1g) (dt), 301.45 (3) (a) 3r., 301.45 (3) (b) 3., 301.45 (5) (b) 2., 756.06 (2) (b), 801.52, 808.04 (3), 808.04 (4), 808.075 (4) (h), 905.04 (4) (a), 911.01 (4) (c), 938.396 (1), 938.396 (5) (a) (intro.), 938.78 (2) (e), 946.42 (1) (a), 950.04 (1v) (xm), 967.03, 972.15 (4), 978.03 (3), 978.045 (1r) (intro.), 978.05 (6) (a), 978.05 (8) (b), 980.01 (5), 980.01 (6) (a), 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (intro.), 980.015 (2) (a), 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (4) (intro.), 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (1), 980.05 (3) (a), 980.05 (3) (b), 980.07 (2), 980.07 (3), 980.09 (title), 980.101 (2) (a), 980.11 (2) (intro.) and 980.12 (1); ***to repeal and recreate*** 809.10 (1) (d), 809.30 (1) (c), 809.30 (1) (f) and 980.08; and ***to create*** 48.396 (6), 48.78 (2) (e), 48.981 (7) (a) 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2) (cm), 756.06 (2) (cm), 814.61 (1) (c) 6., 938.35 (1) (e), 940.20 (1g), 946.42 (3m), 972.15 (6), 973.155 (1) (c), 978.043 (2), 978.13 (2) (a), 980.01 (1g), 980.01 (6) (am), 980.01 (6) (bm), 980.015 (1) (b), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6), 980.031 (title), 980.031 (1) and (2), 980.034, 980.036, 980.038, 980.04 (2) (b), 980.05 (2m), 980.07 (1) (b), 980.07 (1g), 980.07 (1m), 980.07 (4) to (7), 980.093, 980.095, 980.14

(title) and 980.14 (1) of the statutes; **relating to:** the definition of sexually violent person, sexually violent person commitment proceedings, criteria for supervised release, battery by certain committed persons, escape from custody by a person who is subject to a sexually violent person commitment proceeding, and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on sexually violent person commitments. The draft makes various changes to current law (particularly ch. 980, stats.), relating to the commitment, periodic reexamination, supervised release, and discharge of sexually violent persons. The draft makes the following changes in current law:

Definitions

The ***draft*** revises the definition of "sexually violent person" (SVP), and related definitions, for purposes of ch. 980 as follows:

1. Defines "act of sexual violence" (a term found in the definition of "sexually violent person") to mean conduct that constitutes the commission of a sexually violent offense (SVO).

2. Adds 3rd–degree sexual assault to the list of SVOs covered by the definition.

3. Adds felony murder, administering a dangerous or stupefying drug, robbery, and physical abuse of a child to the list of SVOs if such an offense is determined to be sexually motivated.

4. Expands the list of SVOs to include comparable crimes committed prior to June 2, 1994.

5. Revises the term "sexually motivated" to mean that one of the purposes for an act is for the actor's sexual arousal or gratification (current law) ***or for the sexual humiliation or degradation of the victim.*** [SECS. 56 to 63.]

Commencement of Commitment Proceedings

Under ***current law***, if an agency with jurisdiction (i.e., the agency with the authority or duty to release or discharge the person) has control or

custody over a person who may meet the criteria for commitment as an SVP, the agency must inform each appropriate district attorney (DA) and the department of justice (DOJ) regarding the person as soon as possible beginning 3 months prior to the applicable date of the following: (1) the anticipated discharge from a sentence, anticipated release on parole or extended supervision, or anticipated release from imprisonment of a person who has been convicted of an SVO; (2) the anticipated release from a secure juvenile facility of a person adjudicated delinquent on the basis of an SVO; or (3) the termination or discharge of a person who has been found not guilty of an SVO by reason of mental disease or defect.

Under the ***draft***, for persons under a sentence, the agency must inform the DA and DOJ regarding the person as soon as possible beginning 90 days before the date of the anticipated discharge or release on parole or extended supervision, or otherwise, from a sentence of imprisonment or term of confinement in prison that was imposed for a conviction for an SVO, from a continuous term of incarceration, any part of which was imposed for an SVO, or from a prison placement under the intensive sanctions program, any part of which was imposed for an SVO. [SECS. 66 and 67.] ["Continuous term of incarceration, any part of which was imposed for a sexually violent offense" is defined to include confinement in a juvenile facility if the person was placed in the facility for being adjudicated delinquent on the basis of an SVO.] [SEC. 65.] The DA and DOJ must also be notified of the anticipated release on parole or discharge of a person committed under ch. 975, stats. (the sex crimes chapter in effect prior to the creation of ch. 980, stats.), for an SVO. [SEC. 70.]

Filing a Commitment Petition

Under ***current law***, DOJ may file a petition to commit a person as an SVP at the request of the agency with the authority or duty to release or discharge the person. If DOJ does not file a petition, the DA for the county in which the person was convicted, adjudicated delinquent, or found not guilty by reason of insanity or mental disease, defect, or illness, or the county in which the person will reside, may file the petition.

Under the ***draft***: (1) the DA of the county ***in which the person is in custody*** may also file the petition; (2) a juvenile court does ***not*** have jurisdiction over a petition involving a child; and (3) filing fees are eliminated. [SECS. 31, 73, and 77.]

Probable Cause Hearing

Under ***current law***, whenever a commitment petition is filed, the court must hold a hearing to determine whether there is probable cause to

believe that the person named in the petition is an SVP. If the person is in custody, the court must hold the probable cause hearing ***within 72 hours*** after the petition is filed, excluding Saturdays, Sundays, and legal holidays. If the person is not in custody, the court must hold the hearing within a reasonable time after the filing of the petition.

Under the ***draft***, generally, the court must hold the probable cause hearing ***within 30 days***, excluding Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that time is extended by the court for good cause shown. If the person named in the petition is in custody and the probable cause hearing will be held after the date on which the person is scheduled to be released or discharged, the hearing must be held no later than ***10 days*** after the person's scheduled release or discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time is extended by the court for good cause. [SEC. 89.]

Commencement of Trial on Commitment Petition

Current law specifies that a trial to determine whether the person who is the subject of a commitment petition is an SVP must commence no later than 45 days after the date of the probable cause hearing. The court may grant a continuance of the trial date for good cause.

Under the ***draft***: (1) the trial must commence no later than 90 days after the probable cause hearing; and (2) the court may grant ***one or more*** continuances for good cause. [SEC. 91.]

Change of Venue

Under ***current law***, in most civil actions, the court may at any time, upon its own motion, the motion of a party, or the stipulation of the parties, change the venue to any county in the interest of justice, or for the convenience of the parties or witnesses.

The ***draft*** specifies that the general statutory provision does not apply to SVP proceedings. Instead, the draft creates a change of venue procedure specific to SVP proceedings. The person who is the subject of a commitment petition or who has been committed as an SVP may move for a change of the place of a jury trial on the ground that an impartial jury cannot be had in the county in which the trial is set to be held. If the court determines that there exists in the county such prejudice that a fair trial cannot be had, it must, with one exception, order that the trial be held in any county where an impartial trial can be had. Only one change may be granted and the judge who orders the change in the place of trial must preside over the trial.

Alternatively, the definition provides that instead of changing the place of the trial, the court may order that the jury be selected in another

county if all of the following apply: (1) the court has decided to sequester jurors after the commencement of the trial; (2) there are grounds for changing the place of the trial; and (3) the estimated costs to the county appear to be less using an alternate jury rather than changing the place of the trial. [SEC. 84.]

Experts for Examinations

Under ***current law***, whenever a person who is the subject of a commitment petition or who has been committed as a sexually violent person is required to submit to an examination, he or she may retain experts or professional persons to perform an examination.

The ***draft*** provides that, in addition to current law, if a person who is the subject of a commitment petition denies the facts alleged in the petition, the court may appoint at least one qualified physician, psychologist, or other mental health professional to conduct an examination of the person's mental condition and testify at trial. The state may retain a physician, psychologist, or other mental health professional to examine the mental condition of a person who is the subject of a petition or who has been committed and to testify at the trial or any other SVP proceeding at which testimony is authorized. [SEC. 83.]

Right to Remain Silent

In general, under ***current law***, at any hearing relating to an SVP commitment, the person who is the subject of the petition has the right to remain silent.

The ***draft*** does not affect the person's right to remain silent. However, the draft provides that the state may present evidence or comment on evidence that a person who is the subject of a commitment petition or a person who has been committed refused to participate in an examination of his or her mental condition that was being conducted as part of an SVP proceeding or that was conducted before the commitment petition was filed for the purpose of evaluating whether to file a petition. [SEC. 86.]

Hearings to Juries

Under ***current law***, the person who is the subject of a commitment petition, the person's attorney, DOJ, or the DA may request that the trial be to a jury of 12 in order to determine whether the person who is the subject of the petition is an SVP. The court may also, on its own motion, require that the trial be to a jury of 12. A verdict of a jury is not valid unless it is unanimous.

The ***draft***: (1) provides for a jury of 12, but the parties may stipulate to a smaller number of jurors [SEC. 94]; and (2) specifies that juries must be selected and treated in the same manner as they are selected and treated in civil actions in circuit court, except that each party is entitled to 4 peremptory challenges (instead of 3, as for other civil actions), unless fewer jurors are to serve on the jury. [SEC. 93.]

The draft also provides a separate jury requirement for discharge hearings. Specifically, the DA or DOJ, whichever filed the original petition, or the petitioner may request that the discharge hearing be to a jury of 6. A jury trial is deemed waived unless it is demanded within 10 days after the filing of the petition for discharge. No verdict is valid unless it is agreed to by at least 5 of the jurors. [SEC. 111.]

Discovery

In general, under ***current law***, in civil proceedings, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Failure to comply with discovery requests may result in payment of expenses, evidentiary punishment, or contempt findings.

The ***draft*** includes provisions that are specific to discovery in proceedings relating to SVPs and specifically provides that the general discovery process does not apply in ch. 980, stats., proceedings.

Under the draft, upon demand, a prosecuting attorney (PA) must disclose and permit the person or the person's attorney to inspect and copy or photograph all of the following if it is in the possession, custody, or control of the state: (1) any written or recorded statement made by the person concerning the allegations in a petition to commit the person as an SVP or concerning other matters at issue in the trial or proceeding; (2) a written summary of all oral statements of the person that the PA plans to use in the course of the trial or proceeding; (3) evidence obtained by intercepting any oral communication that the PA intends to use as evidence; (4) a copy of the person's criminal record; (5) a list of all witnesses whom the PA intends to call, except rebuttal or impeachment witnesses; (6) any relevant written or recorded statements of a witness; (7) the results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the PA intends to offer in evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, experiment, or comparison; (8) the criminal record of a witness for the state that is known to the PA; (9) any physical or documentary evidence that the PA intends to offer as evidence; and (10) any exculpatory evidence.

Under the ***draft***, upon demand, the person who is subject to SVP proceedings must disclose all of the following: (1) a list of all witnesses whom the person intends to call; (2) any relevant written or recorded statements of a witness, except rebuttal or impeachment witnesses; (3) the results of any physical or mental examination or any scientific or psychological test or instrument, experiment, or comparison that the person intends to offer as evidence and any raw data that were collected, used, or considered in any manner as part of the examination, test, experiment, or comparison; (4) the criminal record of a witness for the person that is known to the person's attorney; and (5) any physical or documentary evidence that the person intends to offer as evidence. If, subsequent to compliance with these requirements, and prior to or during trial, a party discovers additional material or witness names, the party must promptly notify the other party of the existence of the materials or names.

The draft specifies that the court: (1) must exclude any witness not listed or evidence not presented for inspection unless good cause is shown for failure to comply; and (2) may advise the jury of the nonresponsiveness of a party. [SEC. 85.]

Confidential Juvenile, Pupil, Mental Health Commitment, and Patient Health Care Records

Under ***current law***, the following records are confidential and may be disclosed only to persons and entities specified in the statutes: juvenile court records; law enforcement records relating to juveniles; pupil records; and reports of child abuse and neglect. In addition, the files and records of mental health court proceedings are closed but are accessible to any person who is the subject of a petition for involuntary commitment or other petition under ch. 51, stats. (the Mental Health Act). Patient health care records are confidential and may be released upon request without informed consent only under specified conditions.

Under the ***draft***, such records are open for inspection by and production to authorized representatives of the department of corrections (DOC), the department of health and family services (DHFS), DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding. [See, for example, SECS. 3, 4, 5, 8, 15, 17, 36, 38, and 80.]

Mental Health Registration and Treatment Records

Under ***current law***, treatment records of an individual may be released without informed consent under specified circumstances. Regarding SVP proceedings, such records may be released to appropriate examiners and facilities for the examination of an individual who is the subject of a petition for commitment or for supervised release. The recipient of any information from the records must keep the information confidential except as necessary to comply with the provisions of the chapter relating to SVP commitments. In addition, such records may be released to DOJ or a DA for a commitment petition if the treatment records are maintained by the agency that has custody or control over the person who is the subject of the petition.

Under the ***draft***, treatment records may be disclosed to a physician, psychologist, or other mental health professional retained by a party or appointed by the court to examine a person under the chapter relating to SVP commitments or to authorized representatives of DOC, DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, with the same limitations as provided for other confidential records, as described above. [SEC. 10.]

Admissibility of Juvenile Delinquency Dispositions

Under ***current law***, the disposition of a juvenile, and any record of evidence given in a hearing in juvenile court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except as specified under the statutes.

The ***draft*** creates an exception [i.e., such dispositions are admissible] for a hearing, trial, or other SVP proceeding relating to a person. [SEC. 34.]

Privileged Communications With Health Care Providers

Under ***current law***, generally, a patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental, or emotional condition, between the patient and a health care provider. There is ***no privilege*** as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian, for court–ordered protective services, or for protective placement if the health care provider in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services, or protective placement.

The ***draft*** includes in the privilege exception communications and information relevant to an issue in proceedings for control, care, and treatment of an SVP. [SEC. 32.]

Presentence Reports

Under ***current law***, after a conviction, the court may order a presentence investigation, which must be disclosed to the defendant's attorney (or the defendant, if unrepresented) and the DA prior to sentencing. The DOC may use the investigation report for correctional programming, parole consideration, or care and treatment.

The ***draft*** specifies that the presentence investigation report and any information contained in it or upon which it is based may be used by any of the following persons in any evaluation, examination, referral, hearing, trial, post commitment relief proceeding, appeal, or other SVP proceeding: DOC and DHFS; the person who is the subject of the report and his or her attorney; the attorney representing the state or an agent or employee of the attorney; a physician, psychologist, or other mental health professional who is examining the subject of the report; and the court and, if applicable, the jury hearing the case. [SEC. 45.]

Periodic Reexamination

Under ***current law***, DHFS must conduct an examination of the mental condition of each person who has been committed as an SVP ***within 6 months*** of the initial commitment and ***every 12 months thereafter*** to determine whether the person has made sufficient progress for the court to consider whether the person should be placed on supervised release or discharged. The examiner conducting an examination must prepare a written report of the examination no later than 30 days after the date of the examination. The report must be placed in the person's medical records and a copy must be given to the court.

Under the ***draft***:

1. DHFS must conduct the examination ***within 12 months*** after the date of the initial commitment order and ***every 12 months thereafter.*** [SEC. 96.]

2. At the time of the examination, DHFS must prepare a treatment report based on its treating professionals' evaluation of: (a) the specific factors associated with the person's risk for committing another sexually violent offense; (b) whether the person has made significant progress in treatment or has refused treatment; (c) the ongoing treatment needs of the person; and (d) any specialized needs or conditions associated with the person that must be considered in future treatment planning.

3. The examiner's report must include an assessment of the risk that the person will reoffend, whether the risk can be safely managed in the community if reasonable conditions of supervision and security are imposed, and whether the treatment that the person needs is available in the community. The report must be prepared no later than 30 days after the date of the examination and must be provided to DHFS. [SEC. 100.]

4. DHFS must send the treatment report, the written examination report, and a written statement from DHFS recommending either continued institutional care, supervised release, or discharge to the court, with copies to the DA or DOJ and to the person's attorney. [SEC. 100.]

5. If the report concludes that the person does not meet the criteria for commitment as an SVP, DHFS must petition for discharge. [SEC. 100.]

Requests for Supervised Release

Under ***current law***:

1. A person who is committed as an SVP may petition the committing court to authorize supervised release if at least 18 months have elapsed since the initial commitment order was entered or at least 6 months have elapsed since the most recent release petition was denied or the most recent order for supervised release was revoked. The director of the facility at which the person is placed may petition on the person's behalf at any time.

2. Within 20 days after receiving the petition, the court must appoint one or more examiners who have specialized knowledge determined by the court to be appropriate, who must examine the person and furnish a written report to the court within 30 days after the appointment. If any examiner believes that the person is appropriate for supervised release, the examiner must report on the type of treatment and services that the person may need while in the community on supervised release.

3. The court, without a jury, must hear the petition within 30 days after the examiner's report is filed, unless the time limit is waived by the petitioner. The court must grant the petition unless the state proves by clear and convincing evidence that: (a) it is still likely that the person will engage in acts of sexual violence if the person is not continued in institutional care; or (b) the person has not demonstrated significant progress in his or her treatment or the person has refused treatment. In making this decision, the court may consider the nature and circumstances of the behavior that was the basis of the allegation in the petition to commit the person; the person's mental history and present mental condition; where the person will live; how the person will support himself or herself; and what arrangements are available to ensure

that the person has access to and will participate in necessary treatment, including pharmacological treatment if the person is a serious child sex offender.

4. If the court finds that the person is appropriate for supervised release, the court must notify DHFS. DHFS must make its best effort to arrange for placement of the person in a residential facility or dwelling that is in the person's county of residence.

5. DHFS and the county department in the county of residence must prepare a plan that does all of the following: (a) identifies the treatment and services, if any, that the person will receive in the community; (b) addresses the person's need, if any, for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol and other drug abuse (AODA) treatment; and (c) specifies who will be responsible for providing the treatment and services identified in the plan. The plan must be presented to the court for its approval within 60 days after the court finding that the person is appropriate for supervised release, unless DHFS, the county department, and the person request additional time to develop the plan.

The ***draft*** creates a new process for granting supervised release. As noted above, DHFS must recommend continued institutional care, supervised release, or discharge through the reexamination process. The new process in the draft is as follows:

1. Within 30 days after the filing of the reexamination report, treatment report, and DHFS recommendation, the person subject to the commitment, the DA, or DOJ, may object to the recommendation by filing a written objection with the court.

2. If DHFS's recommendation is continued institutional care, and there is no objection, the recommendation is implemented without a hearing. If DHFS recommends discharge or the person files an objection requesting discharge, the court shall proceed with determining whether discharge is appropriate. Otherwise the court, without a jury, must hold a hearing to determine whether to authorize supervised release within 30 days after the date on which objections are due, unless the time limit is waived by the petitioner.

3. The court must determine from all of the evidence whether to continue institutional care and, if not, what the appropriate placement would be for the person while on supervised release. In making this decision, the court may consider the same items as under current law, except that the person's progress in treatment or refusal to participate in treatment is added.

4. The court must select a county to prepare ***a report on the person's prospective residential options***. Unless the court has good cause to select another county, the court must select the person's county of residence. The court must order the county department in the county of intended placement to prepare the report, either independently or with DHFS, identifying prospective residential options. In identifying options, the county department must consider the proximity of any potential placement to the residence of other persons on supervised release and to the residence of persons who are in the custody of DOC and regarding whom a sex offender notification bulletin has been issued. If the court determines that the options identified in the report are inadequate, the court must select another county to prepare a report. The county must report within 30 days of the court order.

5. The court may order that a person be placed on supervised release if it finds that all of the following apply: (a) the person has made sufficient progress in treatment such that the risk that the person will reoffend can be safely managed in the community and the progress can be sustained and the person's risk for reoffense has been reduced to a level that it is not likely that the person will reoffend if so placed; (b) there is treatment reasonably available in the community and the person will be treated by a provider who is qualified to provide the necessary treatment in this state; (c) the provider presents a specific course of treatment for the person, agrees to assume responsibility for the person's treatment, agrees to comply with the rules and conditions of supervision imposed by the court and DHFS, agrees to report on the person's progress to the court on a regular basis, and agrees to report any violations of supervised release immediately to the court, DOJ, or the DA, as applicable; (d) the person has housing arrangements that are sufficiently secure to protect the community, and the person or agency that is providing the housing to the person agrees in writing to accept the person, provide or allow for the level of safety the court requires, and, if the person or agency providing the housing is a state or local government agency or is licensed by DHFS, immediately report to the court and DOJ or the DA, as applicable, any unauthorized absence of the person from the housing arrangement; (e) the person will comply with the provider's treatment requirements and all of the requirements that are imposed by DHFS and the court; (f) DHFS has made provisions for the necessary services, including sex offender treatment, other counseling, medication, community support services, residential services, vocational services, and AODA treatment; and (g) the degree of supervision and ongoing treatment needs of the person required for the safe management of the person in the community can be provided through the allocation of a reasonable level of resources. [SEC. 102.]

Supervision of Persons on Supervised Release

Under ***current law***, an order for supervised release places the person in the custody and control of DHFS. DHFS must arrange for control, care, and treatment of the person in the least restrictive manner consistent with the requirements of the person and in accordance with the plan for supervised release. A person on supervised release is subject to the conditions set by the court and to DHFS' rules. If DHFS alleges that a person has violated any condition or rule, or that the safety of others requires that supervised release be revoked, he or she may be taken into custody under DHFS' rules. DHFS must submit a statement showing probable cause of the detention and a petition to revoke the order for supervised release to the committing court and the regional office of the state public defender responsible for handling cases for that court's county within 72 hours after the detention. The court must hear the petition within 30 days, unless the deadline is waived by the detained person. The state has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked. If the court determines that any rule or condition of release has been violated or that the safety of others requires that supervised release be revoked, it may revoke the order for supervised release and order that the person be placed in an appropriate institution.

The ***draft*** modifies current law relating to revocation of supervised release as follows:

1. If DHFS concludes that a person on supervised release, or awaiting placement on supervised release, violated or threatened to violate a rule of supervised release, it may petition for revocation of the order granting supervised release.

2. As under current law, DHFS may detain a person for a violation or threatened violation. In addition, under the ***draft***, if DHFS concludes that such a person is a threat to the safety of others, it must detain the person and petition for revocation of the order granting supervised release.

3. If DHFS concludes that the order should be revoked, it must file a statement alleging the violation and a petition to revoke the order with the committing court and provide a copy of each to the regional office of the state public defender within 72 hours after the detention. The court must hear the petition within 30 days, unless the hearing or time deadline is waived. A final decision on the petition must be made within 90 days of its filing.

4. If the court finds after a hearing, by clear and convincing evidence, that any rule has been violated and that the violation merits the revocation of the order granting supervised release, the court may revoke the order and order that the person be placed in institutional care. If the court finds by clear and convincing evidence that the safety of others requires that supervised release be revoked, the court must revoke the order granting supervised release and order that the person be placed in institutional care. [SEC. 103.]

Discharge From Commitment

Under ***current law***, if the secretary of DHFS (secretary) determines at any time that a person is no longer an SVP, the secretary must authorize the person to petition the committing court for discharge. The court must hold a hearing, before the court without a jury, within 45 days after receipt of the petition. The state has the burden of proving by clear and convincing evidence that the person is still an SVP. If the court is satisfied that the state has not met its burden, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

Current law also permits a person to petition the court for discharge from custody or supervision ***without the approval of the secretary***. At the time of the person's reexamination, the secretary must provide the person with written notice of the person's right to petition for discharge over the secretary's objections. If the person does not affirmatively waive the right to petition, the court must set a probable cause hearing to determine whether facts exist that warrant a hearing on whether the person is still an SVP. If the court determines at the probable cause hearing that probable cause exists to believe that the committed person is no longer an SVP, then the court must set a hearing, to the court, on the issue. The state has the right to have the person evaluated by experts chosen by the state. The state has the burden of proving by clear and convincing evidence that the committed person is likely to engage in acts of sexual violence or has not made significant progress in treatment or has refused treatment. If the court is satisfied that the state has not met its burden, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release.

The ***draft*** modifies the provisions relating to petitions for discharge ***that do not have DHFS's approval***. The court must deny the petition without a hearing unless the petition alleges facts from which the court may

conclude that the person's condition has changed so that the person does not meet the criteria for commitment as an SVP. In determining whether such facts exist, the court must consider any current or past reports filed in connection with a reexamination, relevant facts and arguments in the petition and in the state's written response, arguments of counsel, and any supporting documentation provided by the person or the state.

The court must hold a hearing within 90 days of the determination that the petition contains facts from which the court may conclude that the person does not meet the criteria for commitment as an SVP. Upon request, the hearing may be to a jury of 6. A verdict must be agreed to by at least 5 of the 6 jurors. The state has the burden of proving by clear and convincing evidence that the person meets the criteria for commitment. The general rules of evidence are inapplicable at such hearings. If the court is satisfied that the state has not met its burden of proof, the petitioner must be discharged from the custody and supervision of DHFS. If the court is satisfied that the state has met its burden, the court may proceed to determine whether to modify the person's existing commitment order by authorizing supervised release. [SECS. 110 and 111.]

Failure to Comply With Time Limits

The ***draft*** provides that failure to comply with any time limit specified in ch. 980, stats.: (1) does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction; and (2) is not grounds for an appeal or grounds to vacate any order, judgment, or commitment issued or entered. Failure to object to a period of delay or a continuance waives the time limit that is the subject of the period of delay or continuance. [SEC. 86.]

Immunity for Noncompliance With SVP Provisions

Under ***current law***, any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with the requirement that an agency notify the DA or DOJ of the anticipated release or discharge of a person who may be an SVP.

Under the ***draft***, any agency or officer, employee, or agent of an agency is immune from criminal or civil liability for any acts or omissions as the result of a good faith effort to comply with any provision of the chapter governing SVP commitments (ch. 980, stats.). "Agency" means DOC, DHFS, DOJ, or a DA. [SECS. 71 and 117.]

Escape

Under ***current law***, a person in custody who intentionally escapes from custody is guilty of a class H felony, punishable by a fine not to exceed $10,000 and a term of imprisonment and extended supervision not to exceed 6 years. "Custody" is defined as actual custody in an institution, including a secure juvenile facility. It does not include the custody of a probationer, parolee, or person on extended supervision unless the person is in actual custody.

The ***draft*** modifies the definition of "custody" to include: (1) actual custody in a facility used for the detention of persons committed as SVPs; and (2) without limitation, the constructive custody of a person placed on supervised release. The draft specifies that a person who intentionally escapes from custody under the following circumstances is guilty of a class F felony, punishable by a fine not to exceed $25,000 and a term of imprisonment and extended supervision not to exceed 12 years and 6 months: (1) while subject to a detention or custody order pending a petition to commit the person as an SVP; or (2) while subject to an order committing the person to custody of DHFS, regardless of whether the person is placed in institutional care or on supervised release. [SECS. 40 and 41.]

District Attorneys

Under ***current law***, the DA in Brown County and the DA in Milwaukee County must each assign one assistant DA to be an SVP commitment prosecutor. Those assistant DAs may file and prosecute SVP commitment proceedings in any prosecutorial unit in the state.

The ***draft*** specifies that if an assistant DA prosecutes or assists in the prosecution of an SVP case in another prosecutorial unit, the unit in which the case is heard must reimburse the assistant DA's own unit for his or her reasonable costs associated with the prosecution, including transportation, lodging, and meals. [SEC. 49.]

Other Items

The ***draft*** also provides that:

1. Notwithstanding the normal process for gaining personal jurisdiction in a judicial proceeding, a court may exercise personal jurisdiction over the subject of an SVP petition even though the person is not served under the normal process with a verified petition and summons or served with an order for detention and the person has not had a probable cause hearing. [SEC. 86.]

2. A motion for post–commitment relief by an SVP or an appeal from a final order or from an order denying a motion for post–commitment relief will follow criminal appellate procedure. An appeal by the state from a final judgment or order will follow the procedure for civil appeals. [SEC. 86.]

3. Constitutional rights available to a defendant in a criminal proceeding are not necessarily available to the person who is the subject to a commitment petition. [SEC. 92.]

Significant changes to, or additions to, current law are also explained in NOTES following the statutory provision or provisions affected by the draft.

SECTION 1. 48.396 (1) of the statutes is amended to read:

48.396 **(1)** Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d) ~~or~~, (5), or (6) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child or expectant mother involved, to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s.

938.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

SECTION 2. 48.396 (5) (a) (intro.) of the statutes is amended to read:

48.396 **(5)** (a) (intro.) Any person who is denied access to a record under sub. (1), (1b) ~~or~~, (1d), or (6) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

SECTION 3. 48.396 (6) of the statutes is created to read:

48.396 **(6)** Records of law enforcement officers and of the court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by and production to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

NOTE: Creates a new provision [s. 48.396 (6)] relating to confidentiality of certain records. ***Current law*** provides that the following records are confidential and may be disclosed only to persons and entities specified in the statutes: (1) juvenile court records; (2) law enforcement records relating to juveniles; (3) pupil records; and (4) reports of child abuse and neglect. Under current law: (1) the files and records of mental health court proceedings are closed but are accessible to any person who is the subject of a petition for involuntary commitment or other petition under

ch. 51, Stats. (the mental health act); and (2) patient health care records are confidential and may be released upon request without informed consent only under specified conditions.

Under new s. 48.396 (6):

1. Juvenile court records and law enforcement records relating to juveniles are open for inspection by and production to authorized representatives of the DOC, the DHFS, DOJ, or a DA for use in the evaluation or prosecution of any SVP proceeding, if the records involve or relate to an individual who is the subject of or who is being evaluated for an SVP proceeding.

2. The court in which the proceeding is pending may issue any protective orders that it determines are appropriate concerning information that is made available or disclosed under this provision.

3. Any representative of DOC, DHFS, DOJ, or a DA may disclose information obtained under this provision for any purpose consistent with any SVP proceeding.

SECTION 4. 48.78 (2) (e) of the statutes is created to read:

48.78 **(2)** (e) Notwithstanding par. (a), an agency shall, upon request, disclose information to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the information involves or relates to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes specified juvenile records accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 5. 48.981 (7) (a) 8s. of the statutes is created to read:

48.981 **(7)** (a) 8s. Authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the reports or records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

NOTE: Makes juvenile records relating to abuse or neglect accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 6. 51.30 (3) (a) of the statutes is amended to read:

51.30 **(3)** (a) Except as provided in pars. (b) ~~and~~, (bm), (c), and (d), the files and records of the court proceedings under this chapter shall be closed but shall be accessible to any individual who is the subject of a petition filed under this chapter.

SECTION 7. 51.30 (3) (b) of the statutes is amended to read:

51.30 **(3)** (b) An individual's attorney or guardian ad litem and the corporation counsel shall have access to the files and records of the court proceedings under this chapter without the individual's consent and without modification of the records in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, or commitment under this chapter or ch. 971 ~~or~~, 975, or 980.

SECTION 8. 51.30 (3) (bm) of the statutes is created to read:

51.30 **(3)** (bm) The files and records of court proceedings under this chapter shall be released to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the files or records involve or relate to an individual who is the subject of or who is being evaluated for a proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

NOTE: Make records under the mental health act accessible in SVP proceedings as described in the NOTE to SECTION 3.

SECTION 9. 51.30 (4) (b) 8m. of the statutes is amended to read:

51.30 **(4)** (b) 8m. To appropriate examiners and facilities in accordance with s. 971.17 (2) (e), (4) (c), and (7) (c)~~, 980.03 (4) or 980.08 (3)~~. The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 ~~or ch. 980~~.

SECTION 10. 51.30 (4) (b) 8s. of the statutes is created to read:

51.30 **(4)** (b) 8s. To appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if the treatment records involve or relate to an